

IN THE SUPREME COURT OF THE STATE OF MONTANA

No. DA 09-0638

STATE OF MONTANA,

Plaintiff and Appellee,

v.

JOHN RICHARDS,

Defendant and Appellant.

FILED

MAR 12 2010

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

MOTION TO DISMISS

The State of Montana moves this Court to dismiss this appeal because the Appellant's notice of appeal is untimely.

BACKGROUND

The Appellant, John Alfred Richards, was convicted by a jury in justice court of speeding, Judge Jewell presiding. (Verdict, attached as Ex. 1.) Richard appealed to district court, contending, among other things, that the prosecutor violated his constitutional rights by not entering into plea negotiations. (D.C. Docs. 26, 27.) The district court affirmed Richard's conviction and sentence in an 11-page order, Judge Seeley presiding. (Memorandum and Order, D.C. Doc. 28, attached as Ex. 2.)

The district court entered its order on July 7, 2009. (Ex. 2.) On July 29, 2009, the district court's law clerk, John Connor, informed Richards of the Rules of Appellate Procedure and that an appeal needed to be filed within 60 days. (Letter, attached as Ex. 3.) Richards filed his notice of appeal on November 30, 2009. (Notice of Appeal, attached as Ex. 4.)

Richards has now filed a one-page brief asserting various conclusory claims.

ARGUMENT

Rule 4(5)(b) of this Court's Rules of Appellate Procedure provides that an appeal must be filed "within 60 days after entry of the judgment from which appeal is taken." Richards filed his notice of appeal nearly three months late.

Accordingly, the appeal should be dismissed.

There is clearly no basis for an out-of-time appeal because Richards was apprised of this Court's rules and the filing deadline. Further, Richards' brief also does not comply with Rule 12 of this Court's rules.

Pursuant to Rules 4(5)(b) and 16, Mont. R. App. P., the State respectfully moves for dismissal of this appeal.

Mr. Richards has been contacted and objects to dismissal of his appeal.

Respectfully submitted this 12th day of March, 2010.

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By: Mark Mattioli
MARK W. MATTIOLI
Appellate Services Bureau Chief

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and accurate copy of the foregoing
Motion to Dismiss to be mailed to:

Ms. Mary Cochenour
Deputy County Attorney
Lewis and Clark County
228 Broadway
Helena, MT 59620

Mr. John Richards
P.O. Box 870
Seeley Lake, MT 59868

DATED: 3/12/10 Mark Mattioli

CERTIFICATE OF COMPLIANCE

Pursuant to the Montana Rules of Appellate Procedure, I certify that this response is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced except for footnotes and for quoted and indented material; and the word count calculated by Microsoft Word for Windows is not more than 5,000 words, excluding certificate of service and certificate of compliance.

Mark Mattioli
MARK W. MATTIOLI

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APPENDIX

Verdict.....Ex. 1

Memorandum and Order.....Ex. 2

LetterEx. 3

Notice of Appeal.....Ex. 4